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1 wanted me in on surgery on Monday the
2 next following week.

3 Q. Say that again.

4 A. I said that he does surgeries on
5 Mondays and Thursdays, and this was
6 Wednesday. And he said he couldn't fit
7 me in on Thursday, but he wanted me in
8 surgery on Monday. And before I could
9 get back home, Victoria had done called
10 and cancelled it.

11 Q. Well, did Dr. Howorth tell you
12 that he wanted to do surgery before he
13 ever saw you?

14 A. Huh-uh (negative). After he
15 seen me --

16 Q. Okay. I'm not there yet.
17 You're jumping ahead of me a little bit.
18 I'm sorry. I was confused.

19 A. Yeah.

20 Q. I'm talking about on October the
21 24th -- I mean, the 22nd when you went to
22 Dr. Shirah for the last time --

23 A. Uh-huh.

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1 Q. -- and he looked at the MRI --

2 A. Uh-huh.

3 Q. And looked at the results and
4 said, "Patient needs to be referred to an
5 orthopedist" --

6 A. Uh-huh, that's true.

7 Q. All right. So, you left his
8 office on the 22nd?

9 A. Yeah.

10 Q. Then Ms. Victoria called you --

11 A. At home.

12 Q. -- at home and said go see --

13 A. Dr. Howorth in Alex City.

14 Q. In Alexander City?

15 A. Alexander City.

16 Q. All right. And said your
17 appointment is for --

18 A. It was on a Wednesday.

19 Q. Okay. And was that October the
20 26th or 27th?

21 A. Somewhere around there.

22 Q. Okay.

23 A. Because he wanted me in surgery

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1 on that next Monday.

2 Q. I understand. I understand.
3 But if you can, don't jump ahead of me
4 too much. I get confused kind of easy.

5 A. All right. I ain't used to
6 this.

7 Q. I understand. Like I say, I'm
8 not trying to trick you. I'm not here
9 trying to trick you. I just want to
10 learn a little bit more about your case.

11 A. Yeah.

12 Q. So, if you -- you know, don't
13 get frustrated. If you want to take a
14 break -- we've been going for, you know,
15 45 minutes.

16 A. I'm fine.

17 Q. Okay. So, Ms. Victoria called
18 you and told you to go and see
19 Dr. Howorth?

20 A. Howorth.

21 Q. Howorth. Okay.

22 A. Yeah.

23 Q. And I'll probably mispronounce

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1 it all day. And the first time you went
2 to see him was on October the 27th?

3 A. Yeah. I took the MRI with me.

4 Q. All right. And you took the MRI
5 film with you?

6 A. Yeah.

7 Q. And you got that from Open MRI,
8 from the people who actually do it?

9 A. And Dr. Shirah looked at it, and
10 he give it to me to take with me.

11 Q. So, you talked to Ms. Heppes,
12 Ms. Victoria --

13 A. Uh-huh (affirmative).

14 Q. -- sometime around the 22nd?

15 A. Yeah, it was -- she set me up an
16 appointment for the Wednesday. But I --
17 it was around the 22nd when I got through
18 with Dr. Shirah. That's the last time I
19 had to go see him because he said he
20 couldn't help me.

21 Q. Did anybody from out at CMI call
22 you on September the 30th? Do you
23 remember?

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1 A. I don't remember. I don't
2 remember nobody calling me.

3 Q. Okay.

4 A. Unless it was Charlotte to tell
5 me I had an appointment with Dr. Shirah.

6 Q. That's fine. I understand.

7 Now, before you went to
8 Dr. Howorth, you were still working light
9 duty?

10 A. Yeah.

11 Q. Okay. And they had paid you
12 some temporary total -- they had made a
13 payment to you for the days you were out
14 of work; is that right?

15 A. Oh, they give me, I think, it
16 was 200 and something dollars. And then
17 when I had surgery, they give me 60
18 bucks.

19 Q. But they paid you for the days,
20 though, that you were out of work; is
21 that right?

22 A. Yeah.

23 Q. Okay.

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1 A. After I had to wait -- you know,
2 I think you had to wait a five-day grace
3 period before they start paying.

4 Q. Okay. And you were still
5 working the whole time even when you were
6 treating with -- seeing Dr. Howorth --

7 A. Yeah.

8 Q. -- before the surgery?

9 A. Yeah.

10 Q. Okay.

11 A. I had to go up there with one
12 arm every night in pain. They didn't
13 want to pay me workman's comp.

14 Q. Well, the doctor is the one who
15 told you you could go back to work;
16 right?

17 A. He said, yeah, as long as I
18 didn't use that shoulder.

19 Q. And that was Dr. Shirah?

20 A. Yeah.

21 Q. Okay. And as far as you know,
22 the emergency room bill for the first
23 time you got hurt -- for the day of the

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1 injury, that was paid by worker's comp;
2 right?

3 A. Yeah, they paid for that.

4 Q. All right. And they paid all
5 the bills for Dr. Shirah?

6 A. Yeah.

7 Q. And they paid for the MRI?

8 A. Yeah.

9 Q. Okay.

10 A. Well, they sent me some of the
11 bills, and I just took them to Wal-Mart.

12 Q. Okay. Well, I understand. But
13 they ultimately paid?

14 A. Yeah, they ultimately paid.

15 Q. You didn't have to pay any of
16 that out of your pocket?

17 A. Huh-uh, they took care of that.

18 Q. Okay. All right.

19 All right. So, the first time
20 you met with Dr. Howorth was on the 27th?

21 A. Uh-huh (affirmative).

22 Q. And you told him how the
23 accident had happened, right --

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1 A. Uh-huh (affirmative).

2 Q. -- that you were cleaning up a
3 produce truck?

4 A. Uh-huh.

5 Q. And told him that you had been
6 treating with Dr. Shirah for a few days
7 and that that wasn't working?

8 A. Yes.

9 Q. He looked at the MRI and showed
10 that there was a tear in the shoulder.
11 And at that time, you told him that you
12 had not had any problems with your right
13 shoulder; correct?

14 A. No, I hadn't had any trouble.

15 Q. Now, on that first visit, he
16 wanted you to go to physical therapy even
17 before surgery, didn't he?

18 A. Ms. Victoria did.

19 Q. Well, Dr. Howorth didn't tell
20 you that he --

21 A. He wanted me in surgery. This
22 was on Wednesday. He wanted me in
23 surgery the next following Monday.

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1 Q. Okay. All right.

2 A. He said there ain't nothing you
3 can do to it until it's fixed. She
4 denied me. They wanted two more
5 doctors --

6 Q. I understand. Well, let's not
7 get to that yet. Okay. I understand.
8 Please -- all right. So, if Dr.
9 Howorth's records say, "Preoperative
10 range of motion and strengthening to
11 improve range of motion and become
12 familiar with post-operative exercise
13 program," in other words, that he had
14 referred you -- Dr. Howorth's records
15 indicate that he had referred you to
16 physical therapy.

17 A. After the surgery.

18 Q. You don't agree with that?

19 A. After the surgery.

20 Q. Okay. All right. And he told
21 you that you needed surgery, and he
22 wanted it done on that Monday?

23 A. Uh-huh (affirmative).

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1 Q. Is that yes?

2 A. Yes, he wanted it done --

3 Q. Okay. What else did he tell you
4 about the surgery?

5 A. He said it being so long -- he
6 said he could already tell there was
7 bursitis set up in it and it needed
8 surgery immediately. And before I get
9 back home, Victoria called and cancelled
10 it.

11 Q. Did he schedule the surgery?

12 A. Yeah. He told me to go on to
13 the hospital and get pre-oped and get
14 ready to go on in.

15 Q. And did you go?

16 A. No. That woman called me and
17 told me to call them. And as soon as I
18 called, she denied it. She said, "We got
19 two more doctors we want to look at them
20 MRI's before we let you do anything."

21 Q. Okay. And who was that,
22 Ms. Victoria?

23 A. Ms. Victoria.

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1 Q. Okay. And where were you when
2 that conversation occurred?

3 A. I was on my phone with her then.

4 Q. At your mother-in-law's?

5 A. Uh-huh (affirmative).

6 Q. That was the 863-6195?

7 A. 6195.

8 Q. Okay.

9 A. I called her every week. She
10 kept saying she needed another doctor to
11 look at it.

12 Q. All right. And you went back to
13 Dr. Howorth again on December the 8th;
14 right? Well, I'm sorry. Did you go back
15 to see him again before the surgery?

16 A. Huh-uh (negative). I had
17 surgery on the 29th of November.

18 Q. Okay. You're right. You're
19 absolutely right. But before -- between
20 October the 27th and the date of that
21 surgery, which was about a month --

22 A. About 63 days.

23 Q. From the injury?

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1 A. Yeah. From the time I got hurt
2 until the surgery was 63 days.

3 Q. Okay. But it was about a month
4 from the first time you saw Dr. Howorth
5 until the surgery?

6 A. Yeah, pretty close to it.

7 Q. All right. Did you go to any
8 other doctors during that month?

9 A. Huh-uh (negative).

10 Q. Is that no?

11 A. No, I didn't go to no other
12 doctors.

13 Q. Okay. And you talked to
14 Ms. Victoria you said every week?

15 A. I called her every week and
16 asked her would she hurry up and let me
17 have surgery because I was in pain.

18 Q. Okay. Do you -- do you know who
19 your -- did you call her, or would she
20 call you?

21 A. Oh, I'd call her.

22 Q. Okay. Do you know who your
23 mother-in-law uses for her phone service?

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1 A. My mother-in-law? She's got
2 Roanoke Telephone.

3 MR. TINNEY: Roanoke Telephone
4 is the only telephone service we have
5 here.

6 THE WITNESS: Uh-huh. If she
7 couldn't get in touch with me, she'd
8 leave a message with my mother-in-law,
9 and my mother-in-law would come tell me,
10 and then I'd go call her.

11 Q. (By Mr. Brown) But you contend
12 that you talked to her and she said that
13 she wouldn't let you have surgery until
14 two other doctors looked at it?

15 A. Yeah. She said we want -- and
16 she said you need to get Howorth to send
17 me everything he's got, MRI's and
18 everything. We need two more doctors to
19 look at it.

20 Q. And did she say that she wanted
21 to send you to a different doctor, or
22 did --

23 A. No. She just said she wanted

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1 two more doctors to look at them.

2 Q. Did she tell you where those
3 doctor were going to be?

4 A. She didn't tell me where they
5 was at. She just said that I needed to
6 get in touch with Howorth and get him to
7 send her everything that he had on me so
8 she could get two more opinions.

9 Q. Okay. And did you talk to
10 Dr. Howorth and tell them to send
11 everything?

12 A. Yeah. And they kept claiming he
13 wasn't sending them the right stuff. So,
14 I had to call him back. Then I'd call
15 her back. They finally send -- you know,
16 finally sent her what she wanted because
17 she finally okayed it on the 29th.

18 Q. Okay. How many times did you
19 call -- did you ever go back to
20 Dr. Howorth's office and ask him, "Will
21 you please give me the records so I can
22 send them"?

23 A. No, I didn't. I just -- he just

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1 told me he'd take care of it and send her
2 what she had to have. And every time I'd
3 call her and ask her did she get what he
4 sent, she said, "No, he didn't send her
5 everything she needed." And I'd call him
6 back and ask him to please send her
7 whatever she needs. Call her and find
8 out what she needs and please send it to
9 her so I could get the surgery done.

10 Q. Okay. And what would his office
11 tell you?

12 A. He said, "We sent her everything
13 we've got."

14 Q. Okay.

15 A. She kept claiming they didn't.
16 Then she claimed one doctor looked at it,
17 but she hadn't had another doctor to look
18 at it. She wanted another doctor to look
19 at it. And it took 63 days before she
20 ever okayed it.

21 Q. Okay. Well, actually, it was
22 like 30 days because it's not 63 days.
23 It's 63 days from the day you injured it?

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1 A. From the time I got hurt, yeah.

2 Q. But about 31 days from the time
3 Dr. Howorth said, "I want to operate on
4 your shoulder"?

5 A. Yeah, uh-huh.

6 Q. Right?

7 A. Yeah.

8 Q. Okay. Okay. Do you know how
9 many times Ms. Heppes had to call
10 Dr. Howorth to ask them to please send
11 the appropriate --

12 A. I don't really know how many
13 times she called. I called every week,
14 and she said they hadn't never sent her
15 what she needed.

16 Q. Okay. And after she would tell
17 you that, you would call Dr. Howorth?

18 A. Yeah.

19 Q. And Dr. Howorth would say,
20 "Well, we already sent everything"?

21 A. "We've sent everything we've
22 got."

23 Q. And then you would do what, call

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1 her back.

2 A. Call her back. And she'd say
3 they still ain't got everything. I don't
4 know why she kept doing it.

5 Q. Okay. All right.

6 A. All I know, I wasn't sleeping in
7 the daytime, and I was up there working
8 all night long in pain for a long time.

9 Q. And you didn't have the
10 opportunity to go and physically get
11 records from Dr. Howorth and mail them
12 yourself; right?

13 A. Huh-uh (negative).

14 Q. Is that no?

15 A. No. Because his secretary told
16 me -- said that she would try to send
17 them everything she could.

18 Q. Do you remember his secretary's
19 name?

20 A. Oh, no.

21 Q. Was it Amy?

22 A. Yeah, I think it was Amy.

23 Q. Now, did you ever call

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1 Ms. Howorth -- not Ms. Howorth --
2 Ms. Heppes on November the 8th, 2004, and
3 tell her that you did not want to do any
4 physical therapy until after surgery?

5 A. Yes, I did. I told her that
6 Dr. Howorth said you can't rehabilitate
7 something that ain't been fixed. And she
8 said, "We thought you could rehabilitate
9 it first." I said, "You can't if it
10 ain't been fixed."

11 Q. Okay. So, how did you find out
12 that you were being told to go to
13 physical therapy before the surgery?

14 A. She called -- she called my
15 mother-in-law before I could even get
16 back home. He done had me scheduled for
17 surgery, and she called and cancelled it
18 and wanted me to do therapy. And I
19 called her back and told her there's no
20 way I can therapy something that's tore
21 up. She said, "Well, you're true about
22 that too."

23 Q. I didn't hear that part.

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1 A. She said, "You're true on that
2 too I guess." I said, "I'm not going to
3 let them hurt my shoulder worser until
4 they fix it." She said, "I understand."

5 Q. Okay. So, you talked to her on
6 the 27th and then the following week. I
7 don't remember what the date of that week
8 was. But the following week, you talked
9 to her, and you had talked back and forth
10 with her and Dr. Howorth; right?

11 A. Uh-huh (affirmative).

12 Q. Okay.

13 A. He was wanting to do it, and she
14 was prolonging it.

15 Q. Why do you think she was
16 prolonging it?

17 A. I don't know. I couldn't figure
18 it out.

19 Q. Do you think that she was
20 intentionally trying to hurt you?

21 A. I told her I was in excruciating
22 pain. I said, "Look. I've been this way
23 for nearly 63 days." I said, "I need

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1 surgery." I said, "This is killing me."
2 She said, "I understand. But we ain't
3 got the right paperwork."

4 Q. But do you think that she was
5 intending to cause you any harm? You
6 don't think she was doing that, do you?

7 A. I tried to explain it to her. I
8 said, "It's killing me. I don't sleep in
9 the daytime, and I have to come up here
10 at night because y'all don't want to pay
11 me workman's comp." And I said, "I'm in
12 excruciating pain."

13 Q. But you don't think that she was
14 doing anything intentionally, do you?

15 MR. TINNEY: I'm going to object
16 and really instruct him not to answer
17 that because you're asking for a mental
18 operation on the part of Victoria, and he
19 would have no way to know what she was
20 intending and not intending. That's the
21 mental operation on her part.

22 Q. (By Mr. Brown) Based on the
23 conversations, did you formulate any of